

IN  
SUPREME COURT OF THE UNITED STATES

October Term, 1975

Misc. No. 75-100

RUSSELL BRYAN, INDIVIDUALLY and  
On Behalf of all Other Persons  
Similarly Situated

PETITIONER

V.

ITASCA COUNTY, MINNESOTA,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF  
THE STATE OF MINNESOTA

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**BEST COPY AVAILABLE**

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IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. \_\_\_\_\_

RUSSELL BRYAN Individually and all  
Others Similarly Situated,

PETITIONER,

vs.

ITASCA COUNTY, MINNESOTA

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO  
THE MINNESOTA SUPREME COURT

Russell Bryan, Individually, and on behalf  
of all other persons similarly situated petitions  
for a writ of certiorari to review the judgment of  
the Minnesota Supreme Court, entered in this  
Case on April 10, 1975.

OPINION BELOW

The Opinion of the Minnesota Supreme Court is  
reported at \_\_\_\_ Minn. \_\_\_\_, 228 N.W.2d 249 (1975).  
A copy of said Opinion is marked as Appendix 1  
and attached to this Petition.

JURISDICTION

Petitioner is seeking review of the decision  
of the Minnesota Supreme Court entered in this  
case on April 10, 1975. This was the final decision  
in this case by the Minnesota Courts. This Court  
has jurisdiction of this Petition for writ of  
certiorari under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

1. Whether Public Law 83-280 conferred on the  
State of Minnesota or its political subdivisions  
the power to impose a personal property tax on the  
mobile home of an enrolled Chippewa Indian located  
on land being held in trust for the Chippewa Indians  
on the Leech Lake Indian Reservation in Minnesota.



CONSTITUTIONAL PROVISIONS, STATUTES, ORDERS AND  
REGULATIONS INVOLVED

The relevant Constitutional provisions,  
statutes, orders and regulations are as follows:

1. The U.S. Const. Art. 1, Sec. 8, Cl. 3:

"To regulate commerce with foreign nations and among  
the several states and with the Indian tribes;"

2. The Treaty of February 22, 1855, (10 Stat.  
1165) between the United States of America and the  
Mississippi, Pillager and Winnibigoshish bands of  
Chippewa Indians. The treaty is attached as  
Appendix J to this Petition.

3. Public Law 83-280, 67 Stat. 583, 18 U.S.  
C.A. § 1162 and 28 U.S.C.A. § 1360 provides:

§ 1162. State jurisdiction over offenses  
committed by or against Indians in Indian country

(a) Each of the States or Territories listed in  
the following table shall have jurisdiction over off-  
enses committed by or against Indians in the areas  
of Indian country listed opposite the name of the  
State or territory to the same extent that such  
State or Territory has jurisdiction over offenses  
committed elsewhere within the State or Territory,

and the criminal laws of such State or Territory  
shall have the same force and effect within such  
Indian country as they have elsewhere within  
the State or Territory:

State or Territory of	Indian country affected
Alaska . . . .	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended
California. . . .	All Indian country within the State
Minnesota . . . .	All Indian country within the State, except the Red Lake Reservation
Nebraska . . . .	All Indian country within the State
Oregon . . . .	All Indian country within the State, except the Warm Springs Reservation

Wisconsin . . . . All Indian country within  
the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty agreement or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

§ 1360. State Civil Jurisdiction in Actions

to Which Indians Are Parties

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska . . . . .	All Indian country within the Territory.
California. . . . .	All Indian country within the State
Minnesota . . . . .	All Indian country within the State, except the Red Lake Reservation

Nebraska . . . . .All Indian country within  
the State

Oregon . . . . .All Indian country within  
the State, except the Warm  
Springs Reservation

Wisconsin . . . . .All Indian country within  
the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band,

or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

4. The Buck Act, 61 Stat. 641, amended August 1, 1956, C. 827, 70 Stat. 799, 4 U.S.C.A. §§ 104-110 provides:

§ 104. Tax on motor fuel sold on military or other reservation reports to state taxing authority

(a) All taxes levied by any State, Territory, or the District of Columbia upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the State, Territory, or the District of Columbia, within whose borders the reservation affected may be located.



(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the State, Territory, or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel with respect to which taxes are payable under subsection (a) for the preceding month.

(c) As used in this section, the term "Territory" shall include Guam. July 30, 1947, c. 389, § 1, 61 Stat. 641, amended Aug. 1, 1956, c. 827, 70 Stat. 799.

§ 105. State, and so forth, taxation affecting federal areas; sales or use tax

(a) No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same

effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940. July 30, 1947, c. 389, § 1, 61 Stat. 641

§ 106. Same; income tax

(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940. July 30, 1947, c. 389, § 1, 61 Stat. 641.



§ 107. Same; exception of United States, its instrumentalities, and authorized purchases therefrom

(a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of personnel of any branch of the Armed Forces of the United States, under regulations promulgated by the departmental Secretary having jurisdiction over such branch. July 30, 1947, c. 389, §1,61 Stat. 641, amended Sept. 3, 1954, c. 1263, § 4, 68 Stat. 1227.

§ 108. Same; jurisdiction of United States over Federal areas unaffected

The provisions of sections 105 to 110 of this title shall not for the purposes of any other pro-

vision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area. July 30, 1947, c. 389, §1,61 Stat. 641.

§ 109. Same; exception of Indians

Nothing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed. July 30, 1947, c. 389, § 1,61 Stat. 641.

§ 110. Same; definitions

As used in sections 105-109 of this title-

(a) The term "person" shall have the meaning assigned to it in section 3797 of title 26.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any Territory or possession of the United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

July 30, 1947, c. 389, § 1, 61 Stat. 641.

STATEMENT OF THE CASE

The facts in this case have been stipulated to and are not in dispute. Russell Bryan is an enrolled member of the Minnesota Chippewa Tribe.<sup>1</sup> Russell Bryan lives with his wife and family in a mobile home which is located on property held by the United States of America in trust for the Chippewa Tribe of Minnesota on the Leech Lake Indian Reserva-

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<sup>1</sup>The Minnesota Chippewa Tribe is organized and recognized as an Indian Tribe by the United States of America pursuant to the Act of June 18, 1934 (48 Stat. 988) as amended. It operates under a Federal Charter of Incorporation dated September 17, 1934, issued by Oscar L. Chapman, then Secretary of the Interior, and ratified by the Tribe on November 13, 1937. In addition to that Charter, the Tribe operates under a Revised Constitution and By-Laws (as amended approved by the Secretary of the Interior on March 3, 1964).

tion.<sup>2</sup> Land so held by the United States government is commonly known as "tribal trust land".<sup>3</sup>

During October, 1971, Russell Bryan had his mobile home placed on the above-referenced property (at Squaw Lake, Minnesota). This mobile home is connected to sewer, water and electricity. In June, 1972, he received notice from the Itasca County

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<sup>2</sup>The Leech Lake Indian Reservation lies in North central Minnesota and consists of 588,684 acres of land occupying portions of Itasca, Cass, Beltrami and Hubbard Counties. The Reservation was created by Treaty in 1855 (10 Stat. 1165) and continued under modifying provisions of subsequent treaties and executive orders. Eighty percent of the land on the Reservation is now owned by county, state and federal governments with the Chippewa National Forest occupying the largest portion of the land. The land, generally swampy and unsuitable for agriculture, includes many lakes, including Cass, Leech and Winnibigoshish. According to the 1970 census, 2795 members of the the Leech Lake Band live within or adjacent to the Reservation. See Leech Lake Band of Chippewa Indians vs Herbst, 334 F. Supp. 1001 (D. Minn. 1971).

<sup>3</sup>Land held in trust for the Indians by the U.S. Government essentially means that the Tribe as a whole has the right to use the land without the power to sell it. See generally Felix S. Coher Handbook of Federal Indian Law, University of New Mexico Press, (1958), Ch. 15.

Auditor that, pursuant to Minn. Stat. 168.012

(8), as amended by Laws 1961, Ch. 340, he had been assessed a tax liability for two months of 1971, amounting to \$29.85 for his mobile home. On June 20, 1972, Bryan was notified by the Itasca County Treasurer that a tax of \$118.10 had been assessed on his trailer for 1972.

On September 11, 1972, an action was commenced by Russell Bryan and all other similarly situated against Itasca County and the State of Minnesota seeking a declaratory judgment declaring the levying of such taxes illegal and enjoining defendants from levying said taxes.

The case was heard by Judge James F. Murphy on March 15, 1973. On July 27, 1973, the Court ordered the State of Minnesota dismissed from the law suit. On December 8, 1973, the Court entered its Judgment and Decree awarding a judgment against the plaintiff in the amount of \$147.95. On February 13, 1974, the appellant filed his notice of appeal with the Minnesota Supreme Court.

On January 7, 1975, the Minnesota Supreme Court, sitting en banc, heard oral arguments on the

case. On March 28, 1975 The Minnesota Supreme Court issued its opinion and on April 10, 1975 judgment was entered.

The question of whether Public Law 83-280 permitted Itasca County to tax the mobile home of Russell Bryan was first raised by petitioner in his complaint. As there were no disputed facts, the case was submitted to the Court on stipulated facts, briefs and oral arguments. The district court ruled that Public Law 280 gave Minnesota the power to tax. On appeal, the Minnesota Supreme Court affirmed.



## REASONS FOR GRANTING THE WRIT

A. The decision by the Minnesota Supreme Court is incorrect as it permits the State of Minnesota to tax reservation Indians without an express authorization by Congress and thereby violates Chippewa Treaty Rights, is contrary to longstanding Congressional policies as well as decisions by this Court, and erodes tribal sovereignty.

### 1. Chippewa Treaty Rights

Minnesota's taxation of Russell Bryan violates Chippewa Treaty Rights. The treaty creating the Leech Lake Indian Reservation (reproduced in Appendix J) does not grant the State of Minnesota the power to tax the Chippewas. Instead, the treaty is silent with respect to taxation. In interpreting Indian treaties such as this, the Court has adopted the general rule that "doubtful expressions are to be resolved in favor of the weak and defenseless people," Carpenter v. Shaw, 280 U.S. 363 (1930), and has held in similar cases that absent specific Congressional authorization, states have no power to tax reservation Indians. Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 685 (1965).

## 2. Federal Indian Policy

This Court has long taken the position that the states have no power over reservation Indians other than that which Congress specifically grants them. Williams v. Lee, 358 U.S. 217 (1959). With respect to taxation, reservation Indians have been immune from state taxes. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973). As late as 1947, Congress jealously guarded the immunity of reservation Indians from taxation through passage of the Buck Act,<sup>4</sup> which this Court has noted is "explicable only if Congress assumed that the states lacked the power to impose the taxes without special authorization" McClanahan, supra, at 177.

Public Law 280 contains no specific authorization granting states the power to tax reservation Indians. In spite of this, the Minnesota Supreme Court, as well as the Eighth Circuit Court of Appeals in Omaha Tribe of Indians et al v. Peters \_\_\_ F.2d \_\_\_ (May 9, 1975), have ruled that in 1953, just 6 years after carefully preserving the immunity of reservation Indians from taxation, Congress swept all this aside by Public Law 280 even though there is no specific authorization to tax in the act.

<sup>4</sup>The Buck Act, now 48 U.S.C. §§104-110 (1964ed), permitted states to levy sales or use taxes within certain federal areas. §109 exempts "Indians not otherwise taxed." This has been interpreted to exclude reservation Indians. Warren Trading Post v. Arizona State Tax Commission, 380 U.S. 685, 692 (1965).



The holding of the Minnesota Supreme Court is, in effect, a repeal by implication of the long-standing tax immunity of reservation Indians.

Regarding repeals by implication, this Court has stated:

"Appellees encounter head-on the cardinal rule...that repeals by implication are not favored...."  
Morton v. Mancari, 417 U.S. 535  
at 549 (1974).

Even though there is no statutory tax exemption for reservation Indians, it is a right based on treaties and sovereign immunity. In cases concerning the extinguishment of Indian rights, the Court has adopted a rule as strict as that for repealing statutes. To effectively extinguish Indian rights, Congress must do so "expressly" in "unequivocal terms" or make its intent clear in the legislative history.  
Mattz v. Arnett, 412 U.S. 481, 504 (1973)

The Minnesota Supreme Court ruled that Public Law 280 gave the states the power to tax even though there is not one word of Congressional history indicating that this was the intent of Congress. In fact, the legislative history available indicates that Public Law 280 was a law and order statute which was designed to shift the responsibility for

for adjudicating criminal and civil disputes involving Indians from undermanned tribal courts to state courts. Indeed, the House Report on H.R. 1063, which became Public Law 280, speaks of the bill as part of a series of measures withdrawing federal responsibility for Indians, but makes it clear that Public Law 280 itself is a more modest solution to a more specific problem; *ie*, the inadequacy of law enforcement and the adjudication of civil conflicts in some areas of Indian country.<sup>5</sup> This Court's previous references to Public Law 280 supports this view. In Kennerly v. District Court of Montana, 400 U.S. 423 (1971), the Court referred to Public Law 280 as an "extension of state jurisdiction over civil causes of action by or against Indians arising in Indian country " and refers to the 1968 amendments (which require the consent of the Indian tribes affected before a state can assume any jurisdiction under Public Law 280) as "a new regulatory scheme

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<sup>5</sup> H. Rep. No. 848, 83rd Cong., 1st Sess., p. 3;  
S. Rep. No. 699, 83rd No. 699, 83rd Cong., 1st Sess.,  
p. 3

for the extension of state civil and criminal jurisdiction to litigation involving Indians arising in Indian country. (400 U.S. at 427-28). Similarly, in Warren Trading Post v. Arizona State Tax Commission, 380 U.S. 658 (1965), the Court referred to Public Law 280 in footnote 3 as:

"Respectively granting certain states criminal and civil jurisdiction over causes of action involving Indians within specified reservations." 380 U.S. at 687

B. Whether or not Public Law 280 conferred taxing power to the states is an important question of law having a substantial impact on tribal sovereignty, individual Indians, and the relations between Indians and the states.

1. The only difference between the present case and McClanahan, supra, is that here Minnesota has been granted limited civil and criminal jurisdiction pursuant to Public Law 280. In McClanahan, supra, this Court ruled that the State of Arizona had no power to tax the income of Navajos on the Navajo reservation. In footnote 18 of the opinion, this Court specifically reserved ruling on whether Arizona could have levied the tax had Public Law 280 applied, stating:

"We do not suggest that Arizona would necessarily be empowered to impose this tax had it followed the procedures outlined in 25 USC §§ 1322 et seq. cf. 25 USC § 1322 (b). That question is not presently before us, and we express no views on it." 411 U.S. at 178.

2. This Court first acknowledged the existence of tribal sovereignty in 1832 in Worcester v. Georgia, 6 Pet. 515. Most recently, in United States v. Mazurie, 419 U.S. 544, 42 L. ed. 2d 706 (1975) the Court noted that "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory" 42 L.ed. 2d at 716. The sovereignty of the Indian Tribes has been held to give them "a status higher than that of states" Native American Church of North America v. Navajo Tribal Council, 272 F. 2d 131, 134 (10th Cir. 1959).

Since the power to tax is an attribute of sovereignty "essential to the very existence of government" McCulloch v. Maryland, 4 Wheat. 316 428 (1819), it follows that an Indian tribe possessing the powers of self-government has the inherent power to levy taxes. Buster v. Wright, 135 Fed. 947 (8th Cir. 1905), appeal dismissed, 203 U.S. 599 (1906); Morris v. Hitchcock, 21 App. D.C. 565 (1903),

affirmed 194 U.S. 384 (1904); Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (8th Cir. 1956).

In order to grow and progress, Indian tribes need revenue for tribal government, housing and economic development. The intrusion of the state into the Indian taxing sphere would make it more difficult for a tribe to levy its own taxes to secure needed revenue to carry on tribal functions. Thus, an important element of tribal sovereignty is being imperiled by Minnesota's levy of taxes on the Leech Lake Indians.

3. As this Court has not determined the scope of Public Law 280, the states are imposing their taxes on reservation Indians. The range of taxes includes:

- a. Income Taxes (both personal & business)
- b. Personal property taxes
- c. Sales taxes
- d. Real Estate taxes (on non-trust or allotted land)
- e. Use taxes
- f. Excise taxes
- g. Gift & inheritance taxes

h. Employee taxes

i. Workmen's compensation taxes

j. License & privilege taxes

The imposition of these taxes on reservation Indians, the great bulk of whom live in grinding poverty, is having a devastating economic impact. As many Indians on the Leech Lake Reservation still hunt and fish for their sustenance, Leech Lake Band of Chippewa Indians v. Herbst, 334, F. Supp. 101 (1971), the imposition of state taxes is depleting the limited resources of these Indians. Thus, when an Indian wishes to use his canoe to rice or fish, a license must be purchased from the state; or when beads are purchased to be used to make Indian beadwork jewelry, or tools are purchased to cut pipestone to fashion peacepipes and other artifacts for tribal ceremonies, a state tax is imposed; when a net is purchased for fishing, or a gun or ammunition purchased for hunting, a state tax is imposed; or when spigots or pails are purchased for maple sugaring, a state tax is imposed. Such taxes make it extremely difficult for Indians to continue to hunt and fish for their sustenance and to retain their Indian culture and heritage. The mobile home tax (personal property tax) in the instant



case is also discouraging reservation Indians, such as Russell Bryan, from living on the very land which was set aside by the 1855 Treaty with the Chippewas (art. 11) "for the permanent homes of the (Chippewa) Indians" (emphasis added). In effect, the most basic Indian policy of all - allowing the Indians to reside on their reservations-is being subverted by the imposition of comprehensive state taxation not expressly authorized or sanctioned by Congress.

Since this Court's decision in McClanahan, supra, a number of states, in addition to Minnesota, which are covered by Public Law 280, have begun taxing their reservation Indians. The imposition of state taxes has been challenged by the Indians in a number of states, including Nebraska's taxation of the income of reservation Indians (See Omaha Tribe of Indians, et al v. Peters, \_\_\_ F.2d \_\_\_, No. 74-1868, 8th Cir., May 9, 1975); Wisconsin's taxation of the income of reservation Indians (see Wildcat et al v. Adamany et al, No. 74-C-226, currently pending before U.S. District Court for the Western District of Wisconsin; and Washington's imposition of excise, use, and sales

taxes on Washington state reservations (see Quillete Indian Tribes et al, v. State of Washington, No. Civ. 74-7619, currently pending before the United States District Court for the Western District of Washington). This litigation challenging the taxing power of the states under Public Law 280 has absorbed much of the limited financial resources of the Indian tribes as well as their energies. To conserve the resources of the Indian tribes and individual Indians, it is important that this Court render a decision concerning this issue.

4. The question of whether Public Law 280 granted the states the power to impose their taxes on reservation Indians is an important question of law affecting:

a.) All those Indians on reservations in the states included originally under Public Law 280 (Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin, except the Red Lake Reservation in Minnesota and the Warm Springs Reservation in Oregon), covering a total of over 65 reservations or rancherias with an estimated



population of 118,250 Indians.<sup>6</sup>

b.) Those Indians in states which subsequently chose to be covered by Public Law 280. Those states are: Florida, Iowa, Nevada, North Carolina, and Washington (on selected reservations). This brought 14 more reservations with an Indian population of approximately 27,000 under Public Law 280.<sup>7</sup>

c.) The remaining states and reservations in the United States which may choose to be covered by Public Law 280 in the future.<sup>8</sup> This includes the remainder of the Indian reservations in the United States, affecting Indians in another 12 states with a total population of approximately

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<sup>6</sup>See Department of the Interior, Bureau of Indian Affairs, Estimates of Resident Indian Population and Labor Force Status; By State and Reservation: March 1973.

<sup>7</sup>Ibid.

<sup>8</sup>Prior to 1968, under the original provisions of Public Law 280, no consent of the tribes affected was necessary before a state could assume jurisdiction under Section 7 of the 1953 Act. However, Title IV of the Civil Rights Act required that:

"State jurisdiction. . . shall be applicable . . . only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians."

§403(b) of the Civil Rights Act of 1958, 82 Stat. 79, 25 U.S.C. §1323(b) (1964ed., supp

112,000 Indians.<sup>9</sup> In order for states and Indian tribes to make an intelligent decision as to whether or not they should choose to be covered by Public Law 280, it is necessary that they know the exact scope of Public Law 280.

It is therefore extremely important to the entire Indian population in the United States, and not just those Indians in current Public Law 280 jurisdictions, that this Court now answer the precise question which it left open in McClanahan, supra, i.e., whether Public Law 280 conferred taxing power to the states over reservation Indians.

5. The issue which Bryan v. Itasca County brings to this Court is one which lower courts across the United States are currently struggling with. It is an issue which this Court has not previously decided. As the question effects the heart of the Indian tribes very existence, their sovereignty, it is an emotionally charged issue which is causing a considerable amount of friction between the Indian tribes and the States. It is forcing every Indian in a Public Law 280

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<sup>9</sup>Department of Interior, Estimates, supra.

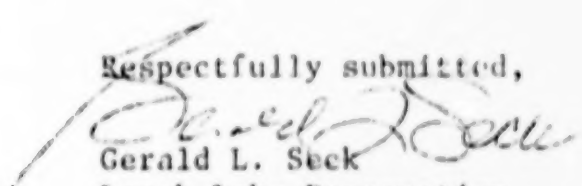
jurisdiction to make a decision with every purchase made, with every tax statement received and with every tax return submitted, as to whether or not he should refuse to pay the tax and risk prosecution by the State. To stop this judicial battle and put an end to the growing friction between the Indian tribes and the States over this issue, it is imperative that this Court provide the sought after answer.

#### CONCLUSION

For these reasons, we respectfully submit that the petition for the writ of certiorari should be granted.

July 3, 1975

Respectfully submitted,

  
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